IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/03/2004

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THE HON'BLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.21215 OF 1994

Smt.R. Shanthi,
W/o. Radhakrishnan .. Petitioner

-Vs-

1. The Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Madras-9.

2. The Special Tahsildar
(Neighbourhood Scheme)
& Land Acquisition Officer,
Nagercoil,
Kanyakumari District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.A. Krishnan for
M/s.A. Sivaji &
Thevan Kumar

For Respondents : Mrs. Thenmozhi Shivaperumal
A.G.P.,

:J U D G M E N T

The petitioner is challenging the proceedings taken under the Land Acquisition Act.

2. 4(1) notification was for the purpose of a neighbourhood scheme. The petitioner has purchased the land by a registered sale deed dated 30.12.1987 and her name has been recorded in the revenue records and she is paying the kist. The contention of the petitioner is to the effect that her name has not been indicated in 4(1) notification and subsequently no notice

had been served on her regarding enquiry under Section 5-A of the Land Acquisition Act. It is also contended that 4(1) notification had not been published properly in accordance with the requirement of law, particularly notice had not been published in widely circulated newspapers as required and the newspapers in which notification was published had practically no circulation in the area.

3. In the counter affidavit it is indicated that 4(1) notification had been published in two newspapers, namely □Kumari Murasu□ and □ Athirshtam□. It is also indicated that even though the petitioner□s name was not found in Section 4(1) notification, subsequently in Section 6 declaration, the name of the petitioner has been published. It is also asserted that notice for enquiry under Section 5-A has been served.

4. In the reply affidavit, the petitioner has specifically asserted that two newspapers had no circulation in the area. It is also specifically asserted that notice under Section 5-A had not been served. The petitioner has called upon the respondents to produce the relevant records in respect of service of notice.

5. It has been held in series of decisions of this Court that the method of publication as contemplated in the Act and the Rules are mandatory. Non-publication in widely circulated newspapers had been considered as a ground vitiating the proceedings.

6. The disputed land is in Nagercoiil village within Kanyakumari District. While considering a similar notification for the very same neighbourhood scheme by the Tamil Nadu Housing Board in the very same village and taluk, publication of notification in Tamil dailes □ Kumari Murasu□ and □Kinnas□ had been found to be inadequate in the decision reported in 2000(III) CTC 215 (N. CHELLADURAI v. THE GOVERNMENT OF TAMILNADU, REP. BY THE SECRETARY TO GOVERNMENT, HOSING AND URBAN DEVELOPMENT DEPARTMENT, FORT ST. GEORGE, MADRAS 9. AND ANOTHER). In the said decision, it was categorically found that □Kumari Murasu□ and □ Kinnas□ had practically no circulation in the area.

7. In the present case, apart from □Kumari Murasu□, there was publication in □Athirshtam□. It is not disputed that in the said newspaper mainly news published relates to lottery tickets. No material has been produced on behalf of the respondents to indicate that such newspapers had wide circulation in the area.

8. Keeping in view the observations made in several decisions, including 2000(III) CTC 215 (cited supra), I am of the opinion that nonpublication of 4(1) notification in widely circulated newspapers as the effect of vitiating the proceedings in the present case.

9. The second contention of the petitioner to the effect that no

notice under Section 5-A has been served also appears to be correct. Except the vague assertion that 5-A notice had been served, there is no material on record to indicate that notice had been served as contemplated under the Act and the Rules. It is also admitted that the name of the petitioner was not indicated in 4(1) notification. According to the respondents, the name was not published as it was not known to the revenue authorities that the petitioner was the owner. If the revenue authorities did not know that the petitioner was the owner, it was not understood as to how notice under Section 5-A was served on the petitioner. On the basis of categorical assertion in the writ petition and in the reply affidavit that notice under Section 5-A has not been served, a bare assertion on the part of the respondents without any supporting material cannot be held to be sufficient to come to a conclusion that notice had been served on her. There is also no material indicating the manner of service of notice either on the petitioner or the predecessor-in-interest.

10. For the aforesaid reasons, the writ petition is allowed.
However, it is made clear that it would be open to the respondents to start fresh land acquisition proceedings in accordance with law, if the land is so required for the public purpose. No costs.

Index : Yes
Internet: Yes

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To

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